

(2015) 10 KL CK 0118
In the High Court Of Kerala
Case No : W.P.(C). No. 3403 of 2015 (A)

P. Radhakrishnan

APPELLANT

Vs

Cochin Devaswom Board and Others

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(k), 32, 33

Citation : (2015) 5 KHC 596 : (2015) 4 KLT 523

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : G. Krishnakumar, Advocate, for the Appellant; Unnikrishnan V. Alapatt and Krishna Menon, SCs, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The petitioner claims to be a disabled person with 42% locomotor disability, who is working as a temple staff under the 1st respondent Board. The petitioner seeks for reservation in appointment to the 25% vacancies earmarked for temple staff in the post of Watchman-cum-Peon. The petitioner claims reservation under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "Act of 1995").

2. The learned Standing Counsel for the respondent Board, however, relies on the counter affidavit, which is in line with Ext.P8 order of the respondent Board, wherein the prayer made by the petitioner was declined for reason of the respondent Board being not an "establishment" under the Act of 1995. The issue revolves only around whether the respondent Board can be considered to be an "establishment" as defined under the Act of 1995.

3. The definition available under Section 2(k) of the Act of 1995 is as follows:

"(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by

the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government."

4. On a reading of the definition the learned Standing Counsel would contend that the respondent Board is not a Corporation nor is it an authority or body owned or controlled or aided by the Government or a local authority or a Government Company, as specifically noticed in the definition clause. The learned counsel for the petitioner, however, would refute the contention on the basis of the decision in Dalco Engineering Private Ltd. Vs. Shree Satish Prabhakar Padhye and Others, as also relying upon the provisions of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (for brevity "TCHRI Act 1950") and the definition of "Corporation" as seen from the Black's Law Dictionary.

5. The respondent Board is constituted under the TCHRI Act 1950. The Board itself is constituted under Chapter VIII of the TCHRI Act 1950. As per Section 63 of TCHRI Act 1950, the Board shall consist of three Hindu members two of whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus, from among the Members of the Legislative Assembly of the State of Kerala. The procedure for election is also provided under Section 64, where a meeting of the Hindus among the members of the Legislative Assembly is to be summoned under the authority of the Governor of Kerala by any person authorised; for such election of a member to the Board.

6. The Board under Section 68 of TCHRI Act 1950 is to administer the affairs of the incorporated and unincorporated Devaswoms under its management in accordance with the objects of a Trust. Under Section 72 of TCHRI Act 1950 the Board is deemed to be a corporate body having perpetual succession and a common seal. The administration vested in the Board under section 62 is also the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions, which were under the management of the Ruler of Cochin immediately prior to the first day of July, 1949. In such circumstance, it cannot, at all, be said that the Board is not an "establishment" as covered under the Act of 1995. The above provisions clearly establish that the Board is a "body corporate", established under the State Act (TCHRI Act 1950) and is an authority controlled by the Government.

7. Further, in considering whether the private companies are brought under the Act of 1995, the Hon"ble Supreme Court in Dalco Engineering Private Limited (supra) held so:

"Where definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. There is difference between "established by Central Act" and

"established under a Central Act". When the words "by and under an Act" are preceded by the words "established", the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. The term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act."

The Board herein is a body corporate established by and under the TCHRI Act, 1950. Hence, Ext.P8 would stand set aside.

8. In the matter of granting appointments, as pointed out by the learned Standing Counsel, Chapter VI of the Act of 1995 provides for identification of the vacancies in which the persons with disabilities can be appointed; which identification is to be made by the Government. Section 32 confers power on the appropriate Government to identify posts in the establishments which can be reserved for persons with disability. Section 33 provides the manner in which such appointments are to be made and ratio to be followed, also indicating the percentage of reservation, which has to be in accordance with the decision of the Hon"ble Supreme Court in Govt. of India through Secretary and Another Vs. Ravi Prakash Gupta and Another, ; on an identification of the total posts and reservation being conferred on the persons with disability so as to ensure their due representation in the cadre.

9. In such circumstance, there shall also be a direction to the 4th respondent to expedite the exercise under Section 33 of the Act of 1995 and identify the posts, at any rate within a period of three months from today. The 1st respondent Board shall produce a certified copy of the judgment before the 4th respondent and the 4th respondent shall act in accordance with the directions herein above within the period specified.

The writ petition stands allowed. The petitioner's claim would depend upon the notification issued on the basis of the identification of the posts and his eligibility being decided from among the temple employees who come under the Act of 1995. No costs.